

Weekly Summary of Cases National Labor Relations Board

Week of January 3-7, 2011, W-3294

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Summarized Board Decisions

SRC Painting, LLC, PBN, LLC, and Liquid Systems, et al. (30-CA-16577, 16813; 356 NLRB No. 74) Milwaukee, WI, January 5, 2011. [HTML] [PDF]

The Board granted the Acting General Counsel's motion to transfer proceedings to the Board and motion for partial summary judgment, based on the respondents' failure to file an answer to the compliance specification that conformed to the requirements of the Board's rules and regulations, but denied motion to strike portions of the respondents' answer. The Board remanded the cases to the Regional Director for a hearing to take evidence concerning mitigation and interim earnings. The Board denied the Acting General Counsel's motion for default judgment, finding that the answer timely filed by some of the respondents served to preclude the entry of a default judgment against the respondents who failed to file an answer, since they were alter egos of one another. The Board issued its original decision in this proceeding March 31, 2006.

Charges filed by International Union of Painters and Allied Trades, District Council No. 7, AFL-CIO. Chairman Liebman and Members Pearce and Hayes participated.

Goya Foods, Inc. (29-CA-29945; 356 NLRB No. 73) Bethpage, NY, January 5, 2011. [HTML] [PDF]

The Board found that the employer violated the Act by directing an employee to leave a union meeting he was participating in and ordering him off the premises, and that the employer also violated the Act by suspending the employee for initially defying these orders.

Charge filed by an Individual. Administrative Law Judge Raymond P. Green issued his decision June 15, 2010. Chairman Liebman and Members Becker and Pearce participated.

U. S. Postal Service (24-CA-10805; 356 NLRB No. 75), San Juan, PR, January 5, 2011. [HTML] [PDF]

The Board found that the respondent violated the Act by refusing to furnish the union with prehiring test scores of employees hired into the bargaining unit, rejecting the respondent's argument that confidentiality concerns justified the refusal. Additionally, the Board found that due process did not preclude the finding of this violation because the text of the complaint and the surrounding circumstances put the respondent on notice that it was alleged to have violated the Act in this regard.

Charge filed by National Postal Mailhandlers Union, Local 313, NPMHU. Administrative Law Judge Michael B. Rosas issued his decision August 5, 2008. Chairman Liebman and Members Pearce and Hayes participated.

American Firestop Solutions, Inc. (18-CA-19133, 356 NLRB No. 71) Waukee, IA, January 5, 2011. [PDF]

The Board found that the construction-industry employer violated the Act by withdrawing recognition from the union and by making subsequent unilateral changes in the unit's terms of employment, on the basis that the parties had a bargaining relationship based on Section 9(a) rather than on Section 8(f). The Board agreed with the Administrative Law Judge that the recognition clause in the parties' October 23, 2003, collective-bargaining agreement established the 9(a) relationship within the requirements of *Staunton Fuel & Material*, 335 NLRB 717 (2001). The Board also noted, however, that the extrinsic evidence in the record also established that the parties had entered into the 9(a) relationship, and that the result would therefore be the same under *Nova Plumbing, Inc. v. NLRB*, 330 F.3d 531 (D.C. Cir. 2003). For this reason, Member Hayes found no need to reassess the rule of *Staunton Fuel*.

Charges filed by International Association of Heat & Frost Insulators and Allied Workers, Local 74. Administrative Law Judge Michael A. Rosas issued his decision March 1, 2010. Chairman Liebman and Members Becker and Hayes participated.

Decisions in cases involving prior rulings by two-member Board

The following cases involve prior rulings by the two-member Board, whose authority to act was rejected by the U.S. Supreme Court decision in *New Process Steel, LP* (June 17, 2010). The new decisions summarized here were reached by a three-member panel of the Board or by the full Board.

Gelita USA Inc. (18-CA-18406, 18-RC-17500; 356 NLRB No. 70) Sergeant Bluff, IA, January 4, 2011. [HTML] [PDF]

The Board adopted the administrative law judge's finding that the respondent violated the Act by promising benefits to unit employees, interrogating two employees about their union sympathies, telling employees that, in the event of an economic strike, they would have no job protection if replaced, and accelerating the termination of an employee.

Charges filed by United Food and Commercial Workers International Union, Local 1142. Administrative Law Judge William N. Cates issued his decision December 21, 2007. Chairman Liebman and Members Becker and Pearce participated.

Unpublished Board Decisions in Representation Cases

HSP Investment I, LLC a Washington LLC, d/b/a Birchview, a Memory Care Community (19-RC-15349) Sedro Woolley, WA, January 4, 2011. Order amending the Regional Director's decision to permit the administrative assistant, part-time week receptionist, and community relations director to vote by challenged ballot and denying the employer's request for review in this and all other respect. Petitioner – International Association of Machinists & Aerospace Workers, District Lodge 751, AFL-CIO. Chairman Liebman and Members Becker and Pearce participated.

Edward C. Levy Co. d/b/a The Levy Company (25-RC-10436) Portage, IN, January 6, 2011. No exceptions having been filed to the Hearing Officer's report the Board adopted the Hearing Officer's findings and recommendations, and ordered that the election conducted on February 24-25, 2010, be set aside and a rerun election be conducted. Petitioner – International Union of Operating Engineers, Local 150, AFL-CIO.

Front-Line Security Agency Inc. and Peace Security Inc. (29-RC-11951) Manhattan, Queens, Long Island, Brooklyn, NY and NJ, January 6, 2011. No exceptions having been filed to the Regional Director's report the Board adopted the Regional Director's findings and recommendations and found that a certification of results of election should be issued. Petitioner – United Security Officers of America, Local 821.

FJC Security Services, Inc. (16-RC-10932) Fort Worth, TX, January 7, 1011. The Board having reviewed the record in light of intervenor's exceptions adopted the Hearing Officer's findings and recommendation to overrule the challenges to eight ballots and directed the Regional Director to open and count the ballots. Petitioner – Federal Contract Guards of America (FCGOA). Members Becker, Pearce and Hayes participated.

Decisions of Administrative Law Judges

D. R. Horton, Inc. (12-CA-25764; JD(ATL)-32-10) Deerfield Beach, FL. Decision and order transferring proceeding to NLRB. Charges field by an Individual. Administrative Law Judge William N. Cates issued his decision January 3, 2011. [HTML] [PDF]

Oak Harbor Freight Lines, Inc. (19-CA-31797, et al.; JD(SF)-54-10) States of WA, OR, ID, and CA. Charges filed by Teamsters Locals 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, 962. Administrative Law Judge John J. McCarrick issued his decision January 5, 2011. [HTML] [PDF]

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